

IRVIN AND MAXINE BAKER

IBLA 73-313

Decided March 11, 1974

Appeal from decision W6-73-1(15) of the Casper District Office, Bureau of Land Management, awarding a grazing lease to one party and denying it to another because the latter's application was untimely filed.

Affirmed.

Applications and Entries: Filing--Grazing Leases:

Generally--Grazing Leases: Applications--Regulations: Interpretation

Where an application for a grazing lease pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315M (1970), is not filed within the sixty-day period established by 43 CFR 4125.1-1(a)(3), the application may be rejected as untimely filed. The exercise of this discretion must be based on rational considerations which may include any of the factors enumerated in 43 CFR 4121.2-2(d), pertaining generally to proper range management.

APPEARANCES: Irvin Baker, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Irvin and Maxine Baker have appealed from the February 26, 1973, decision of the Manager of the Casper District Office, Bureau of Land Management, which rejected their application for a grazing lease and awarded a lease to Wilk and Mary Ann Riesland, pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970). The lands applied for by both the Bakers (appellants) and the Rieslands were covered by a lease issued to Wilk and Mary Ann Riesland which expired on November 20, 1972. The appellants' application was received in the Casper District Office on November 8, 1972, and the Riesland's application was received on October 6, 1972. The pertinent regulation, 43 CFR 4125.1-1(a)(3), provides that:

Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the authorized officer as not timely filed. \* \* \*

Since the appellants' application was not filed within the sixty-day period provided by the regulation, the District Manager rejected it without stating any further reasons for so doing. From this decision the Bakers filed a timely appeal with this Board. Subsequently, on November 26, 1973, this office received a supplemental statement from the Casper District Office explaining why the lands in dispute should be awarded to the Rieslands and not the appellants.

In order to preserve the fairness of the appellate procedure, this Board, by an order issued on December 21, 1973, returned the supplemental statement to the Casper District Office with instructions to serve the statement on the parties, to give the parties an opportunity to respond, and to resubmit the statement, preferably through the office of the Regional Solicitor, if they wished the statement to form part of the record. The Casper District Office has complied with these instructions and the time allowed the parties to respond has expired without any response being submitted. Therefore, we will proceed with consideration of the appeal.

As the appellants have pointed out, the original decision by the District Manager does not contain an adequate basis for rejecting their application. The authority to reject applications not timely filed is contained in the regulation already cited, 43 CFR 4125.1-1(a)(3), which calls for the exercise of discretion supported by rational considerations. Cox Enterprises, Inc., 14 IBLA 29 (1973). Although the original decision of the District Manager does not mention any supporting rational considerations, the supplemental statement does contain several reasons which support the result of the original decision. Those reasons are the same as those contained in 43 CFR 4121.2-2(d)(2) which sets forth the proper basis for division of grazing lands between conflicting applicants.

The authorized Officer will allocate the use of the public land on the basis of any or all of the following factors: (i) Historical use, (ii) proper range management and use of water for livestock, (iii) proper use of the preference lands, (iv) general needs of the applicant, (v) topography, (vi) public ingress and egress across preference

lands to public lands under application (where access is not presently available), and (vii) other land use requirements.

The Casper District Office in its supplemental statement has pointed out that: (1) historically, these lands have been leased to the Rieslands, (2) proper range management for most of the lands in dispute would be better served by leasing the and to the Rieslands, and (3) because of the topography of the area the Rieslands not only need the land for proper use of the preference lands, but can also make better use of the land in dispute. Since the appellants have not disputed these statements and since it is the policy of this Board to uphold decisions of District Managers unless shown to be arbitrary, Thomas W. Dixon, 10 IBLA 19 (1973), we find that the District Manager's decision is supported by rational considerations. Accordingly, the District Manager's decision to reject appellant's application for the reason that it was filed after the period prescribed by regulation did not constitute an abuse of discretion.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

---

Edward W. Stuebing  
Administrative Judge

We concur:

---

Douglas E. Henriques  
Administrative Judge

---

Newton Frishberg  
Chief Administrative Judge

